



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

May 3, 1991

Mr. Philip W. Barnes  
Commissioner  
State Board of Insurance  
1110 San Jacinto  
Austin, Texas 78701-1998

OR91-232

Dear Mr. Barnes:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11367.

You have received a request for documents related to a certain named corporation that were compiled during the course of an investigation of possible violations of state insurance laws governing unauthorized insurers. You assert that the information is excepted from required public disclosure under section 3(a)(3) of the act, which excepts:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

You note that the request is identical to a request already referred to this office, which was assigned ID# 11238. In that request, we concluded that the information sought was excepted under section 3(a)(3). You inform us that litigation still is reasonably anticipated. Therefore, we conclude that the information continues to be protected from disclosure by section 3(a)(3).

Section 7 of the Open Records Act governs the duty of custodians of public records to ask for a decision of this office when it receives a request under the act. That section provides:

If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, *but there has been no previous determination that it falls within one of the exceptions*, the governmental body within a reasonable time, no later than ten calendar days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information.

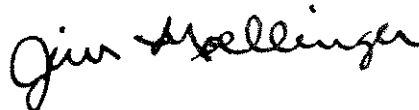
V.T.C.S. art. 6252-17a, § 7(a) (emphasis added).

For purposes of section 7 of the act, Open Records Letter OR91-077 constitutes a prior determination. Accordingly, if you receive any additional requests for information regarding the named corporation that is the subject of this request, you are entitled to rely on the previous open records letter and withhold the requested information. We note, however, that if the records become available to the opposing party in the litigation, by discovery or otherwise, they will no longer fall within section 3(a)(3). Open Records Decision No. 349 (1982). Moreover, the protection of section 3(a)(3) ordinarily ceases once the litigation comes to an end. *See generally* Open Records Decision No. 245 (1980).

We have considered the exception you claimed, specifically section 3(a)(3), and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 551 (1990), a copy of which is enclosed, resolves your request. For this reason, you may withhold the requested information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-232.

Yours very truly,



Jim Moellinger  
Assistant Attorney General  
Opinion Committee

JM/mc

Ref.: ID#s 11367, 11238

Enclosure: Open Records Decision No. 551 (1990)

cc: Mr. Billy R. Wolfe  
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